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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Samir S. SHIBAN

Art Unit: 1793

Serial No. 10/750,902

Examiner: Johnson, Edward M.

Filed: January 5, 2004

For: COMBINED CHEMICAL AGENT AND DYNAMIC OXIDATION TREATMENT
OF HAZARDOUS GAS

PETITION TO WITHDRAW RESTRICTION

37 CFR 1.144

MPEP 818.03c

To the Director of the Patent and Trademark Office

Sir:

Kindly review and withdraw the restriction requirement.

The examiner has admitted the claims are related and has restricted the claims under MPEP 806.05(e). The examiner has therefore admitted that the claims are not for independent inventions under 806.06. The examiner has correctly stated, "Inventions II and I are related as process and apparatus for its practice. O.A.1, page 2, lines 11-12.

However, the examiner has stated incorrectly in the office action 1, page 2, next to last line "...these inventions are independent and distinct..." That, of course is incorrect. The

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response dated July 30, 2007 is incorporated herein by reference. Claims 1-13 and 14-26 do not claim independent inventions in the meaning of MPEP 806(A) and 806.06.

In the application, there is a single embodiment and the claims define the same essential features. Restriction is not proper. See MPEP 806.03.

Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition. See MPEP 806.03.

Here the inventions are related as disclosed and are not distinct as claimed.

Where inventions are related as disclosed but are not distinct as claimed, restriction is never proper. See MPEP 804.03(C).

Restriction is not proper where related inventions as claimed are not distinct. See MPEP 806.03(D).

Where two or more related inventions are claimed, the principal question to be determined in connection with a requirement to restrict or a rejection on the ground of double patenting is whether or not the inventions as claimed are distinct. If they are distinct, restrictions may be proper. If they are not distinct, restriction is never proper. See MPEP 806.05.

3. A process can be practiced by hand if it can be performed without using any apparatus. See MPEP 806.05(e).

The burden is on the examiner to provide reasonable examples that recite material differences.

If applicant proves or provides convincing argument that there is no material difference or that a process cannot be performed by hand (if examiner so argued), the burden is on the examiner to document another materially different process or apparatus or withdraw the requirement. See MPEP 806.05(e).

The process cannot be practiced by hand. It requires an apparatus. The examiner has not met his burden of proof.

The two examples given by the examiner are meaningless and do not consider the claims as claimed.

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All of this was pointed out to the examiner in the response filed July 30, 2007, which is incorporated herein by reference.

The identical terse responses of the examiner on the tops of pages 2 of office actions 2 and 3 did not address the discussions, the requirements of the examiner's burden of proof was not met. In fact, claims 1 and 14, the only independent claims if placed side by side, can be seen to be substantially identical. In the entire disclosure, there is only one embodiment. Claims 1 and 14 and their dependent claims are directed to that single embodiment.

The examiner's hypothetical examples do not meet his burden of proof under MPEP 806.05(e).

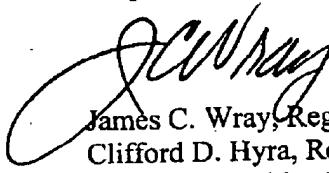
- a specific catalytic or absorbing means would be equally within claims 1 and 14.
- a specific treatment of NO_x and SO_x and or halogens would be equally within claims 1 and 14.

The examiner's requirement for restrictions under MPEP 806.05(e) does not meet his burden of proof.

CONCLUSION

WITHDRAWAL of the requirement for restriction and allowance of all claims is requested.

Respectfully,



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CLAIM 1

- (Withdrawn) Gas treatment apparatus comprising, a combined chemical agent treatment container and a dynamic oxidizer connected to the chemical agent treatment container, the chemical agent treatment container further comprising a fill port for filling the chemical agent treatment container with chemical agent, a drain port for emptying spent chemical agent from the chemical agent treatment container, at least one gas inlet connected to the chemical agent treatment container for admitting gas to be treated to the container, a gas transfer conduit for removing chemical agent treated gas from the container, and wherein the dynamic oxidizer further comprises a chamber connected to the container, wherein the gas transfer conduit is connected to the chamber for supplying gas flowing out of the container to the chamber, an oxygen inlet connected to the chamber for supplying oxygen to the chamber and oxidizing oxidizable components of the gas flowing from the container to the chamber, and a gas outlet connected to the chamber for flowing chemical agent treated and oxidized gas from the chamber.

- (Original) Gas treatment method comprising, providing a combined chemical agent treatment container and a dynamic oxidizer, connecting the chemical agent treatment container to the dynamic oxidizer, providing on the chemical agent treatment container a fill port, filling the chemical agent treatment container with chemical agent, providing a drain port, emptying spent chemical agent from the chemical agent treatment container through the drain port, providing at least one gas inlet connected to the chemical agent treatment container admitting gas to be treated to the container, providing a gas transfer conduit, removing chemical agent treated gas from the container through the transfer conduit, providing the dynamic oxidizer with a chamber connected to the container, connecting the gas transfer conduit to the chamber, flowing gas out of the container to the chamber through the transfer conduit, providing an oxygen inlet connected to the chamber, supplying oxygen to the chamber through the oxygen inlet, oxidizing oxidizable components of the gas flowing from the container in the chamber, providing a gas outlet connected to the chamber, and flowing chemical agent treated and oxidized gas from the chamber.